



**FILED**

Mar 20 2008, 10:01 am

*Kevin L. Smith*

**CLERK**  
of the supreme court,  
court of appeals and  
tax court

ATTORNEYS FOR APPELLEE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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No. 45A04-0707-CR-383

**March 20, 2008**

## SHARPNACK, Judge

Andre Vena appeals his sentences for ten counts of burglary as class B felonies<sup>1</sup> and four counts of burglary as class C felonies.<sup>2</sup> Vena raises one issue, which we revise and restate as whether Vena's sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. In late July and early August of 2006, Vena burglarized a number of locations in Lake County. Vena did not have permission to enter any of the establishments or remove property from them. Specifically, Vena gained entry into the Apostolic Fellowship Church through a window and took a safe with various items including \$280. Vena went to the Lakeside Baptist Church, gained entry through a closed door, and stole a laptop computer and twenty dollars. Vena went to the New Life Baptist Church and "when a window air condition unit was removed an alarm sounded and [Vena] exited through a locked door from the interior and did not remove any items." Appellant's Appendix at 44. Vena went to the After Four Club and "a padlock was broken off an interior office door and \$200.00 in cash was taken." Id. Vena returned to the After Four Club and pried open an outside door and took about fifty dollars in coins. Vena went to the Lakeshore Marina and gained entry by forcing a garage door open, and Vena took a VCR and approximately \$400. Vena went to the Port Cedar Bar, broke a window, and cut himself. Vena left without stealing anything because he was bleeding.

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<sup>1</sup> Ind. Code § 35-43-2-1 (2004).

<sup>2</sup> Id.

Vena also went to the First United Methodist Church, broke several panes of glass, and gained entry through the rear exterior door. Vena broke into several interior offices, but did not take any property. Vena went to the Free Spirit Interfaith Church, pried open an exterior door, and took \$300 from a desk drawer. Vena went to the Trinity Lutheran Church, gained entry by prying open an exterior door, and rummaged through the building, but did not steal anything. Vena and Donna Jo Shrader went to St. John's United Church of Christ, gained entry through the back door by forcing it open, and took a laptop computer and \$100. Vena and Shrader went to the Southlake Christian Church, and Vena stood as a lookout for Shrader, who gained entry through a window, rummaged around, but did not find anything to steal. Vena went to the Southlake Fundamental Baptist Church, gained entry through a basement door, pried open several interior doors, ransacked several offices, but did not steal anything. Vena went to the Central Christian Church, gained entry by prying open the rear door with a crowbar, rummaged through the building but did not find anything to steal.

The State charged Vena with ten counts of burglary as class B felonies, four counts of burglary as class C felonies,<sup>3</sup> and theft as a class D felony.<sup>4</sup> Vena pleaded

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<sup>3</sup> Specifically, the State charged Vena with: three counts of burglary as class B felonies, four counts of burglary as class C felonies under cause number 45G02-0609-FB-95; six counts of burglary as class B felonies under cause number 45G02-0609-FB-97; and one count of burglary as a class B felony under cause number 45G02-0609-FB-99.

<sup>4</sup> Ind. Code § 35-43-4-2 (2004).

The State charged Vena with theft under cause number 45G02-0609-FB-95 for exerting

guilty to ten counts of burglary as class B felonies, four counts of burglary as class C felonies, and admitted the violations contained in a petition to revoke probation under cause number 45G02-0609-FD-113 (“Cause # 113”). In exchange, the State agreed to dismiss the count of theft as a class D felony. The plea agreement stated that “the parties agree that said sentences shall be served concurrently to one another but consecutive to any sentence the Court may impose in the Petition to Revoke Probation in [Cause # 113] pursuant to statute.” Id. at 76.

The trial court found the following aggravating circumstances: (1) Vena’s history of criminal convictions; (2) Vena’s recent violation of his conditions of probation; and (3) the fact that multiple offenses and numerous victims were involved. The trial court found the following mitigators: (1) Vena has made or will make restitution to the victims of the crimes; (2) Vena admitted his guilt by way of the plea agreement; (3) Vena’s drug addiction has been a significant contributing factor in Vena’s criminal conduct; (4) Vena had been diagnosed as HIV positive; and (5) Vena surrendered himself to authorities before charges were filed. The trial court found that the aggravating factors “equally balance[d]” the mitigating factors. Id. at 82. The trial court sentenced Vena to ten years for seven of the counts of burglary as class B felonies, six years for three of the counts of burglary as class B felonies, and six years for the four counts of burglary as class C felonies. The trial court ordered that the sentences be served concurrently, but

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unauthorized control of two cartons of cigarettes, which were the property of a gas station.

consecutive to the sentence of eighteen months that the court imposed under Cause # 113. The trial court suspended three years for a total executed sentence of seven years for the offenses that occurred in late July and early August 2006.

The sole issue is whether Vena's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Vena argues that a mitigated sentence of less than the advisory sentence of ten years is appropriate.

Our review of the nature of the offense reveals that Vena burglarized ten churches and three other establishments. Vena ransacked and rummaged several of the churches. At the sentencing hearing, Vena stated that he was "high on crack" and was looking for "the quickest, fastest way to get something." Transcript at 32-33.

Our review of the character of the offender reveals that Vena surrendered himself to authorities before charges were filed. Vena pleaded guilty, but the State agreed to concurrent sentences and dismissed a count of theft as a class D felony. Vena indicated that he used crack cocaine "on the weekends, 'on & off.'" Appellant's Appendix at 182.

Vena has a juvenile adjudication for battery in 2003. As an adult, Vena has a conviction for theft as a class D felony, and he was on probation for this offense at the time of the current offenses. Vena received the advisory sentence for a class B felony of ten years, and the trial court suspended three years. See Ind. Code § 35-50-2-5 (Supp. 2005). After due consideration of the trial court's decision, we cannot say that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Rose v. State, 810 N.E.2d 361, 368-369 (Ind. Ct. App. 2004) (holding that defendant's sentence was not inappropriate).

For the foregoing reasons, we affirm Vena's sentence for ten counts of burglary as class B felonies and four counts of burglary as class C felonies.

Affirmed.

BARNES, J. and VAIDIK, J. concur